



October 30, 2000

Ms. Margaret A. Roll
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2000-4207

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140617.

The Texas Department of Human Services (the "department") received a request for all documents in a specific file regarding a named individual. You state that the department will release most of the requested information to the requestor. However, you claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin with your argument that the social security numbers contained in the submitted materials are confidential under section 552.101 in conjunction with federal law. Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Accordingly, section 552.101 encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes confidential social security numbers and related records that have been obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.*

You argue that the social security numbers contained in the submitted documents have been obtained and maintained by the department pursuant to a law enacted after October 1, 1990: section 242.032(d)(4) of the Texas Health and Safety Code. Subchapter B of Chapter 242 of the Health and Safety Code pertains to "licensing, fees, and inspections" of health facilities. Section 242.032, which pertains to applications for licenses or license renewals, provides in pertinent part:

;

(a) An application for a license or renewal of a license is made to the department¹ on a form provided by the department and must be accompanied by the license fee.

(b) The application must contain information that the department requires.

...

(d) The department shall consider the background and qualifications of:

...

(4) a controlling person with respect to the institution for which a license or license renewal is requested.

Health & Safety Code § 242.032 (footnote added). You explain that the individual named in the request (the “licensee”) owns a corporation for which he applied to the department for a license to operate a nursing facility. Apparently, information about the licensee was collected during the background investigation that the department conducted pursuant to section 242.032(d)(4). The collected information includes, among other things, the licensee’s as well as an other individual social security numbers. However, we do not read section 242.032(d)(4) to be a provision of law that contemplates the obtaining or maintaining of social security numbers. Therefore, although the department seems to have collected the social security numbers as a consequence to its conducting its background investigation under section 242.032(d)(4), we do not believe that this fact makes the social security numbers confidential under the Social Security Act¹ as encompassed by section 552.101 of the Government Code.

However, we note that the licensee’s social security number and that of another individual appear on the submitted portion of the “Application for Nursing Facility License” (“application”). As stated above, section 242.032(b) of the Health and Safety Code requires that the information furnished on the application for a license or the renewal of a license “must contain information that the department requires.” It appears from the submitted application that the department requires that certain social security numbers be furnished on the application. To the extent that the department required the social security numbers on the submitted application, we find that the department has obtained those social security numbers pursuant to a provision of law enacted after October 1, 1990. Therefore, if the department required the licensee’s or any other individuals’ social security numbers on the application, then under section 552.101 in conjunction with the Social Security Act, the department must withhold those social security numbers wherever they appear on the application or on any of the documents at issue.

¹Throughout chapter 242, “department” refers to the Department of Human Services. Health & Safety Code § 242.002(4).

We now turn to your argument that the submitted information contains a bank account number that is confidential under common law privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. However, a corporation or other business entity does not have a common law right to privacy. *See* Open Records Decision No. 600 (1992). The bank account number at issue belongs to a business entity, the Summit Ridge Retirement Center, and therefore is not confidential under common law privacy as encompassed by section 552.101. Therefore, the department must release the bank account number.

Finally, we address the two drivers license numbers that you have brought to our attention. Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. You explain that at least at the time you submitted the information at issue, the department was not certain whether the drivers license numbers that appear on the submitted documents are Texas drivers license numbers. Under section 552.130, the department must withhold the driver's license numbers only if they are Texas drivers license numbers. Otherwise, the numbers must be released.

In conclusion, under section 552.101 the department must withhold the social security numbers that the department required to be furnished on the submitted application. Such social security numbers are confidential wherever they appear on the submitted documents. Furthermore, under section 552.130 the department must withhold the drivers license numbers that appear on the submitted documents, but only if they are Texas drivers license numbers. The department must release the remainder of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 140617

Encl: Submitted documents

cc: Mr. Mark S. Dugan
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(w/o enclosures)